Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Dkt 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Dkt 94-1
	)	
MCI Telecommunications Corporation Emergency Petition for Prescription of Access Charges	)	CC Dkt 97-250
	)	
Consumer Federation of America Petition for Rulemaking	)	RM 9210

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby files its Comments in response to the Public Notice released October 5, 1998, FCC 98-256, asking parties to update and refresh the record in the access charge reform and price cap dockets.[1] These Comments are limited to two issues raised in the Public Notice: the prescription of interstate access rates to cost-based levels and the specific pricing flexibility proposals that have been filed by Bell Atlantic and Ameritech.[2]

The members of ALTS, facilities-based competitive local exchange carriers, would be

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[1] Access Charge Reform, CC Dkt No. 96-262, 12 FCC Rcd 15982 (1997), aff'd sub nom. Southwestern Bell Tel. Co. V. FCC, No. 97-2618 (8th Cir. Aug. 19, 1998); Price Cap Performance Review for Local Exchange Carriers, CC Dkt 94-1, 12 FCC Rcd 16642 (1997), appeal pending sub nom. USTA v. FCC, No. 97-1469 (D.C. Cir.).

[2] Letter form Kenneth Rust, Director, Federal Regulatory Affairs, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, April 27, 1998; Letter from Anthony M. Alessi, Director, Federal Relations, Ameritech, to Magalie Roman Salas, Secretary, Federal Communications Commission, June 5, 1998.

delighted if in fact barriers to the provision of competitive services had crumbled and competition had developed to the point at which pricing flexibility actions could safely be implemented for the incumbents. But, the Commission must, as it did in the long distance market, make sure that certain protections are in place and certain conditions exist prior to granting pricing flexibility to the incumbents. The proper sequencing of ILEC pricing flexibility is critical. As ALTS has said previously, bad or premature deregulation is far worse than bad regulation.

I. THE COMMISSION'S ACCESS CHARGE REPORT AND ORDER

Fourteen months ago, when the Commission adopted its First Report and Order in the Access Charge Reform Docket, it opted for a market-based approach over a prescriptive approach to driving access charges toward forward-looking economic costs. The Commission reasoned that 1) competitive markets are "superior mechanisms for protecting consumers,"[3] 2) the use of a market-based approach should minimize the potential that regulation would create or maintain distortions in the investment decisions of competitors, and 3) a market-based approach is the best way of identifying and eliminating implicit subsidies that may remain in access charges. In addition, the Commission found that "competition will do a better job of determining the true economic cost of providing [access] services."[4]

In the First Report and Order the Commission also discussed the effect that developing competition would have on the regulatory policies relevant to the incumbents and, specifically, regulatory and pricing flexibility. The Commission concluded that:

> where competition develops, we will provide incumbent LECs with additional flexibility, culminating in the removal of incumbent LECs'

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[3] First Report and Order at para. 263.

[4] Id. at para. 265.

> interstate access services from price regulation where they are subject to sufficient competition to ensure that the rates for those services are just and reasonable and are not unjustly or unreasonable discriminatory.[5]

The Commission made it clear that competition must precede deregulation: "[d]eregulation before competition has established itself, however, can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers."[6]

II. THE AMERITECH AND BELL ATLANTIC PLANS

As indicated in the Public Notice, two incumbents, Ameritech and Bell Atlantic, recently have made specific pricing flexibility proposals that differ in several respects from proposals contained in the record in the Access Charge Reform proceeding. Although it is somewhat difficult to determine the precise nature of these proposals as they were made to the Commission pursuant to ex parte communications that consist of bullet points rather than a detailed discussion

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[5] Id. at para. 266 (emphasis added).

[6] Id. at para. 270. See also id. at para. 273: "We will deregulate incumbent LEC services only when it is reasonable to conclude that competition has developed to such an extent that the market will ensure just and reasonable rates." Because the Commission understood the harm that could result from premature deregulatory actions, it stated that it intended to give carriers progressively greater flexibility in setting rates as competition develops and "gradually" replacing regulation. Id. at 14.

The Commission's adoption of a market-based approach to the reduction of access charges and the concomitant regulatory flexibility for incumbents was tempered by the adoption of a prescriptive "backstop" that was intended to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. What is important, for present purposes, is that the Commission's prescriptive backdrop was just that - a backdrop for those instances or in those circumstances where competitive forces had developed too slowly to ensure that competition would drive prices to cost.

of the proposals, the following is what ALTS understands is the essence of the proposals.[7]

Generally, Bell Atlantic and Ameritech argue that increased competition has accelerated their need for pricing flexibility.[8] They argue that a pricing flexibility framework should be adopted immediately as an industry-wide standard. Under both proposals there would be three phases that would trigger varying degrees of pricing flexibility. Phase I would exist when there are "negotiated or state approved agreements or SGATs for: UNEs, transport and terminating compensation, [and] resale" (Ameritech) or negotiated or state approved agreements for UNEs, resold services and transport and termination of traffic and interim number portability is available and 100 UNE loops are in service (Bell Atlantic). The second phase would be triggered when competitors have demonstrated the capability to provide service to 25% of the market area and the third phase would be triggered when competitors have demonstrated the capability to provide service to 75% of the market area.

Under the first phase, both Ameritech and Bell Atlantic propose that ILECs be permitted to engage in geographic deaveraging under a zone rate structure. The Ameritech proposal is not specific as to precisely what elements would be eligible for deaveraging; Ameritech, on the other hand, generally limits its deaveraging proposal to non-traffic-sensitive elements. In addition the proposals provide that under phase I ILECs should be able to offer volume and term pricing (Ameritech) or make "promotional offerings" (Bell Atlantic), new services would not be subject to the Part 69 public interest test and cost support would not need to be filed (Ameritech) and the

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[7] While the Bell Atlantic ex parte addresses more than pricing flexibility in the context of switched access charges, ALTS' comments are limited to the effect of pricing flexibility in those circumstances. ALTS takes no position on intraexchange (intraLATA) services and Directory Assistance.

[8] Ameritech, for example states that as of April 1998 it has 123 approved interconnection agreements (including resale), is provisioning 83,000 UNE loops, and that there are 400 Ameritech wire centers with collocation.

SBI would be increased to ten percent per year (Ameritech). Under Phase II the incumbents would be able to geographically deaverage rates without a zone rate structure and without submitting cost support and would be able to bundle services, engage in contract pricing and "growth pricing." Finally under Phase III switched access services would be removed from Price Cap regulation.

Ameritech's proposal for access pricing flexibility advocates that the area for relief be no smaller than a LATA. Bell Atlantic's proposal, on the other hand, appears to seek flexibility on a wire center, by wire center, basis as it seeks to classify each wire center as either "competitive" or "non-competitive."

III. ANY PRICING FLEXIBILITY MUST BE PRECEDED BY AN ELIMINATION OF ALL BARRIERS TO COMPETITIVE ENTRY, AND THE ESTABLISHMENT OF SIGNIFICANT EFFECTIVE COMPETITION.

A. The Triggers for Pricing Flexibility Must be Based on Compeitive Facts, Not Competitive Potential.

The Commission was correct in its First Report and Order when it concluded that a market-based approach is superior to a prescriptive approach in attempting to satisfy the twin goals of the Telecommunications Act of 1996 to promote competition and remove implicit universal service support subsidies. Similarly, the Commission was correct when it stated that deregulatory actions taken before competition has become established can result in injury to consumers and a stifling of the precise competition that the Commission seeks to encourage.

The difficulty with which the Commission is faced is to determine precisely when competition has developed to such a degree that it can safely take the various deregulatory and pricing flexibility actions that Bell Atlantic and Ameritech advocate. While the members of ALTS agree with the basic assumption in the Ameritech and Bell Atlantic proposals that there can be a logical sequencing of pricing flexibility based upon the extent to which competition is

emerging,[9] the proposals draw the lines at the wrong places and put the cart before the horse. A phased-in implementation obviously requires the Commission to select carefully the particular market conditions that must exist in each phase and the particular changes in incumbent regulation that will be made in each phase.

Although the members of ALTS have made strides in the two and one half years since the passage of the 1996 Act and in the fourteen months since the release of the First Report and Order in the Access Charge Reform docket and, thus, it would be premature to take prescriptive action, the progress is far short of where it would need to be to ensure that pricing flexibility by the incumbents would not hurt consumers and stifle the competition that does exist and is continuing to emerge. While the short time period for submission of these comments has not enabled ALTS to obtain precise figures from its members, it is still true today, as it was fourteen months ago, that new entrants have less ten percent of the total interstate access market.[10] Such a small percentage of the market certainly does not give to the competitors the ability to prevent the types of abuses that could occur should the incumbents be granted pricing flexibility. Such a small share of the market demonstrates the absence of a competitive market, especially given the

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[9] In fact, the Commission itself has proposed a gradual replacement or lessening of regulation as competition develops. See Notice of Proposed Rulemaking in CC Dkt 96-262 at para. 336.

[10] One source, the Strategis Group, estimates that at year end 1997, the CLECs collectively earned 1.528 Billion in access revenue. Even if one were to assume that all of that access revenue were interstate access revenue (which it clearly would not be), that be would less than 10 percent of the approximately 20 billion that the ILECs earn in interstate access charges each year. It is estimated that CLECs may earn almost 2.5 billion in access revenue in 1998, but even if CLECs as a group do earn that much, that would only be a little over ten percent of the ILEC interstate access revenue, but well under ten percent of the ILEC total access revenue. The Stategis Group, U.S. Competitive Local Markets - 98 (1998).

continued existence of ILEC control over bottleneck facilities.[11]

Both the Ameritech and Bell Atlantic proposals confuse competitive potential with actual competition. The trigger for Phase I would occur as soon as there is a competitor who has signed an agreement with the ILEC. The Phase I trigger proposed by Ameritech does not even require that a competitor be "up and running".[12]

The triggers proposed for Phase II and Phase III both address only the "capability" of competitors to provide service to a percentage of the market area. Putting aside for a moment that the definition of "capability" is not clear and that the percentage chosen (at least for the Phase II proposal) is relatively small, it is clear that a potential competitor rather than an actual competitor has far less ability to curb anticompetitive behavior. A trigger based upon the possibility of a competitive supplier rather than the existence of competitive supplier would be very risky. Pricing flexibility and similar deregulatory actions should be based upon market facts not market potential.

Bell Atlantic and Ameritech both tout the interconnection agreements they have signed as demonstrating that competition exists and that pricing flexibility is necessary. With all due

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[11] ALTS recognizes the hesitancy with which the Commission has always viewed market share as determinative of whether there is a competitive market and the difficulty with which it is faced in collecting precise data. Precise data is probably not possible to collect or even necessary in making a determination of whether a market is competitive. In addition, however, the Commission has twice begun proceedings to collect general information on the markets. See Local Competition Data Collection, CCB-IAD 95-110.

[12] While the trigger proposed by Bell Atlantic is slightly better than the trigger proposed by Ameritech because it requires that 100 UNE loops be in service and that interim number portability be available, 100 loops being in service would hardly show that access competition exists. In addition, both the Bell Atlantic and Ameritech proposal that there be agreements relating to discounted resold services and transport and termination of traffic are not particularly probative of the issue of competitive access service. Those items are significantly more relevant to whether competition exists in the local exchange market.

respect, the number of interconnection agreements signed is of almost no probative value in determining the extent of competition or even the ability of competitors to provide service. In addition, Bell Atlantic's statement that "state approved interconnection agreements have removed the remaining barriers to entry" clearly misses the mark. As ALTS has demonstrated often, and most recently in its Section 706 petition there are many remaining barriers to entry: OSS systems that do not function properly, collocation arrangements that are neither fair nor and quickly available, and slow provisioning of end office and tandem trunking just to name a few that are under the control of the incumbents. (And, of course, there are other barriers that are not under the control of the incumbents such as access to municipal rights of way).

The Commission should remember its own history in dealing with similar issues in the long distance market. Pricing flexibility was not seen as appropriate for AT&T until it had lost approximately 40 percent of the market and there were a number of firms with 5-10 percent of the market.[13]

Finally, it is interesting to note that the proposals made by Bell Atlantic and Ameritech would require a less stringent showing of competition prior to implementation of certain pricing flexibility than was proposed by NYNEX in December of 1995. In the NYNEX filing in CC Dkt 94-1,[14] it sought to trigger increased pricing flexibility when there existed "effective competition" not "potential competition" in specific markets. For example, under the NYNEX proposal, services would be removed from Price Caps only when CLECs have fifteen percent of more of the demand for a service in a geographic area. While the members of ALTS might

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[13] See In re Motion of AT&T Corp to be Reclassified as a NonDominant Carrier, 11 FCC Rcd 3271 (1995).

[14] Comments of NYNEX in In re Price Cap Performance Review, submitted Dec. 11, 1995.

disagree with NYNEX as to the percent of traffic provided by CLECs, the principle that a certain amount of competitive activity (as opposed to potential) must be the trigger for pricing flexibility.

B. The proposed Regulatory Relief is Too Much Too Soon

As noted in the previous section, the triggers that Ameritech and Bell Atlantic have suggested depend more upon the potential than the fact of competition. In addition the actual regulatory relief suggested would allow the ILECs very significant pricing flexibility prior to the development of competitive forces sufficient to control anticompetitive behavior.

For example both proposals appear to allow the ILECs to geographically deaverage at least some elements of their access charges under the Phase I trigger (which would be today for most ILECs). However, there is no proposal that there would be deaveraging of the UNEs that the competitors use to provide access services. There should be no deaveraging of any portion of access charges unless and until the ILECs agree to loop deaveraging.[15]

In addition, the Bell Atlantic proposal would allow the companies to "respond to RFPs" and the Ameritech proposal would allow the companies "contract pricing and growth pricing" at the Phase II trigger (when competitors have demonstrated the capability to provide servie to 25% of the market area). The potentially anti-competitive pricing flexibility measures such as RFP and contract rate authority should be placed at the end of any phase-in of pricing flexibility not at the beginning. See Price Cap FNPRM at para 61-65.

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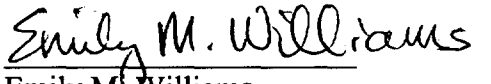
[15] In fact the Commission itself has proposed that the ILECs must be able to show that unbundled network element proces are based on geographically deaveraged, forward looking economic costs in a manner that reflects the way costs are incurred. NPRM in In re Access Charge Reform, CC Dkt 96-262, at para. 163 (released December 24, 1996).

CONCLUSION

The pricing flexibility proposals of Bell Atlantic and Ameritech would not protect consumers, encourage competitive entry or accomplish the other goals of the Telecommunications Act of 1996. They could enable the incumbents to adopt anticmpetitive pricing mechanisms that could severely harm competitors. The members of ALTS have no objection to the Commission taking deregulatory actions or allowing the incumbents pricing flexibility when competition has developed to the point that anticompetitive practices can be curtailed. But it would be premature for the Commission to take such action at this time.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 1998, copies of the foregoing Comments of the Association for Local Telecommunications Services were serviced via first class mail, postage prepaid or by hand delivery to the persons listed below.

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